

KEYWORDS: carrier/contractor liability

DIGEST: The Board finds that DOHA adjudicators had a reasonable basis to conclude there was insufficient evidence of tender to the carrier of items claimed as missing.

CASENO: 07061112

DATE: 6/21/2007

DATE: June 21, 2007

In Re:)
North American Van Lines)
)
) Claims Case No.07061112
)
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The Board finds that DOHA adjudicators had a reasonable basis to conclude there was insufficient evidence of tender to the carrier of items claimed as missing.

DECISION

The Carrier Recovery Branch of the Department of the Navy requests reconsideration of the May 15, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07040201. In that decision, our Office allowed a \$6,587.19 refund to the carrier.

Background

The member's household goods were picked up from Lemoore, California, on November 28, 2000, and placed into non-temporary storage (NTS) in Fresno, California. On November 27, 2001, North American Van Lines (NOAM) picked up the shipment from the NTS facility in Fresno, and delivered it on December 2, 2001, to Anacortes, Washington. The member claimed that numerous household goods were lost or damaged on the *Notice of Loss or Damage* (DD Form 1840R) which was dispatched to the carrier on February 8, 2002. In the appeal decision, our Office refunded \$6,587.19 to NOAM because of lack of evidence of tender.

Discussion

Under federal law, in an action to recover from a carrier for damage or loss of an item in transit, a *prima facie* case is established by showing delivery to the carrier in good condition, failure to deliver or arrival in a damaged condition, and the amount of damages. *See Missouri Pacific R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

In this case, our adjudicators did not find sufficient evidence of tender of the missing items. The Board has reviewed the appeal decision and concludes that there is substantial record evidence to support the adjudicators' finding. The Board finds no error of fact or law in the appeal decision.

Conclusion

The Navy's request for reconsideration is denied, and we affirm the May 15, 2007, appeal decision in DOHA Claim No. 07040201. In accordance with DoD Instruction 1340.21, ¶ E7.15.2 this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board